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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,278	12/16/2003	Tilo Dittrich	DT-6693	6177
30377	7590	11/01/2005		
DAVID TOREN, ESQ. ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017-5621			EXAMINER CHUKWURAH, NATHANIEL C	
			ART UNIT 3721	PAPER NUMBER

DATE MAILED: 11/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

②

<b>Office Action Summary</b>	<b>Application No.</b> 10/737,278	<b>Applicant(s)</b> DITTRICH ET AL.	
	<b>Examiner</b> Nathaniel C. Chukwurah	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 4,7,9 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5,6,8 and 13-18 is/are rejected.
- 7) ☒ Claim(s) 10,11 and 19-22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/5/05</u> | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The indicated allowability of claim 15 is withdrawn in view of the newly discovered reference(s) to Maier. Rejections based on the newly cited reference(s) follow.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5-6 and 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Maier (US 3,981,424).

With regard to claim 1, Maier discloses an explosive-operated power tool comprising: a housing (1, 21, 41) having a cylindrical cavity (see arrow in Fig. below), and a piston chamber (see arrow in Fig. below), for receiving a drive piston (4), a breech bottom (5, 22, 42) located opposite the cavity and fixedly secured relative to the housing (1, 21, 41), a sealing sleeve (2b, 23b, 46) located in the cavity (see arrow in Fig. below) of the housing (1, 21, 41) and displaceable axially away from the breech bottom (5, 22, 42), and a cartridge (6a).

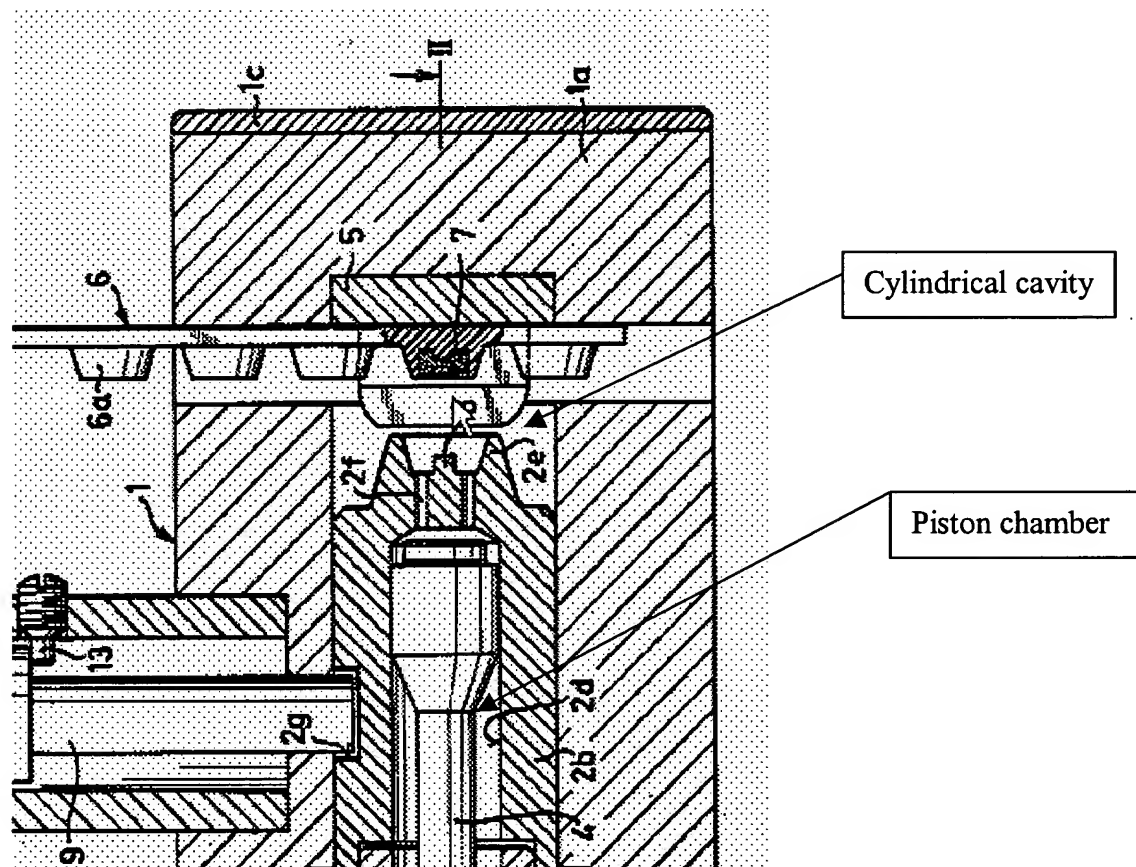
With regard to claim 2, the central axes of the cavity and the piston (4) extend at an angle to each other (see the Fig below).

With regard to claim 5, the sealing sleeve has surfaces (see arrow in Fig. below) which provide for displacement of the sealing sleeve (2b, 23b, 46) toward the breech bottom (5, 22, 42).

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With regard to claim 6, the bottom surface of surface 2 as shown the Figure below is spaced from a bottom of the cavity when sealing sleeve receives the cartridge (6). See also Fig. 2 of Maier reference.

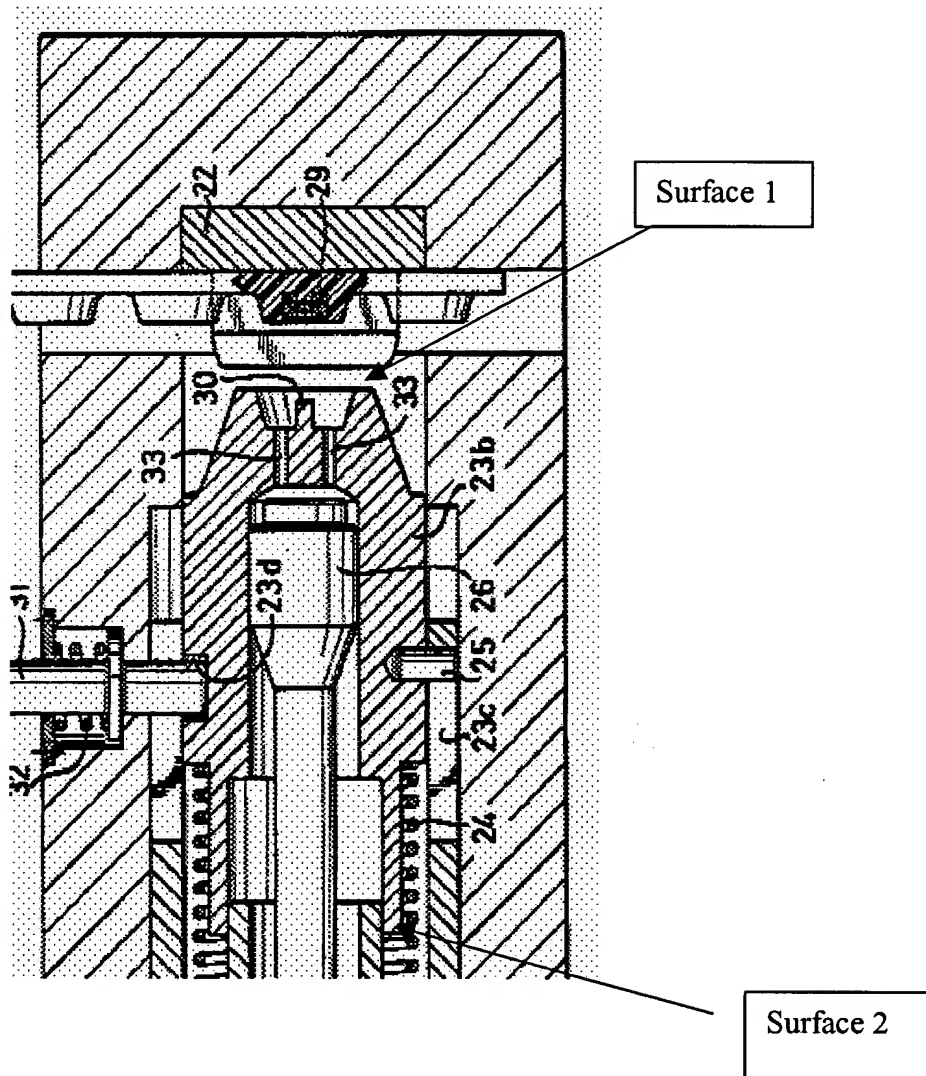
With regard to claim 13, Maier discloses a spring means (24, 47) for displacing the sealing sleeve (23b, 46).



With regard to claim 14, Maier discloses an actuation element (2a, 23a) provided at a front end of the tool and displaceable relative to the housing (21, 41) for operating a mechanism (23a, 24) for displacing the sealing sleeve (23b, 46), the displacing mechanism displacing the sealing sleeve (23b, 46) toward and away from the breech bottom (22, 42) upon displacement of

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the actuation element (2a, 23a) toward the housing (21, 41) and away from the housing , respectively.



With regard to claim 15, the displacing mechanism (23a, 24) comprising actuating pipe (10) including latch (9) and spring (12) for retaining the sealing sleeve (2b, 23b) wherein actuating pipe (10) including latch (9) lift against the spring force displacement of the actuation member (2a, 23a) toward the housing, and which is equivalent to the spring fork as claimed.

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With regard to claim 16, the cartridge (6a) is fed in a region between the sealing sleeve (2b, 23b, 46) and breech bottom (5, 22, 42).

With regard to claim 17, cartridge (6a) are formed as blister cartridge connected to each other in belt form.

With regard to claim 18, cartridges (6a) project above one side of belt (6) wherein another side of the belt is slidably displaceable along the breech bottom (5, 22, 42).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maier.

With regard to claim 3, Maier discloses all claimed features except the central axes of the cavity and piston chamber forming an angle of 90° with each other.

It would have been obvious design choice to modify the reference of Maier by having the central axes of the cavity and piston chamber form an angle of 90° with each other, since applicant has not disclose that having central axes of the cavity and piston chamber form an angle of 90° with each other solves any stated problem or is for any particular purpose and it appears that the tool will perform equally well with the central axes of the cavity and piston chamber at an angle higher than the claimed angle with each other.

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Claims 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maier in view of Ehmig (US 3,981,424).

With regard to claim 8, Maier discloses all claimed features except circumferential seals encompassing the sealing sleeve. Ehmig teaches circumferential seals (8) encompassing the sealing sleeve (9).

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the sealing sleeve of Maier by providing circumferential seals as taught by Ehmig in order to prevent leakage of the propellant gas between the sealing sleeve and cylindrical cavity of the housing.

#### ***Allowable Subject Matter***

Claims 10, 11 and 19-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art fail to disclose or suggest a guide pin projecting from the housing into the cavity, and for guiding the sealing sleeve; and an end of the sealing sleeve having a circumferential nose-shaped projection extending axially and radially inward.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-2, 5-6, 8 and 13-18 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathaniel C. Chukwurah whose telephone number is (571) 272-4457. The examiner can normally be reached on M-F 6:00AM-2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NC

October 18, 2005.

  
Rinaldi Rada  
Supervisory Patent Examiner  
Group 3700